

THE INDEPENDENT

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HELENA, MONT., DEC. 17, 1889.

IN LINE.

The democratic senators-elect took the oath of office yesterday in accordance with the understanding reached last week, and as soon as the republican representatives-elect follow them in complying with the governor's proclamation and take their seats in the house, the legislature can be fully organized and proceed to business. Of itself the qualifying of the democratic senators would accomplish nothing, but, followed, as it undoubtedly will be, by the appearance of the absent republican members-elect of the house, or a large and respectable portion of them, in their proper place, the step taken by the eight senators yesterday may be of great importance.

In any event, the action of the democratic senators removes the last pretext of the republican representatives-elect that they were no more obstructionists in refusing to respond to the governor's proclamation than the democratic senators.

All the senators, republicans and democrats, have formally acknowledged the right of the governor to designate the time and place for their meeting by appearing and taking the oath; so, too, have the democratic representatives.

Only the twenty-five republican representatives now stand out and prevent the machinery of state from starting. They have no possible excuse for remaining out an hour longer. They were officially notified yesterday by the lawful house to appear and take their seats in that body forthwith. They should have met the democratic senators half-way then and acted the honorable part by making a graceful concession.

We believe they will yet do so without waiting for the unpleasant alternative of having their seats declared vacant. They have been formally refused recognition by the governor; the senators of both parties, by complying with the governor's proclamation, have virtually declared that when the senate is organized it can only recognize the co-ordinate body which, like itself, accepts without question the governor's authority. This makes the condition of the rump house hopeless.

The next move on the board will be watched with great interest. The democrats have now gone to the utmost verge of concession without surrendering a single principle. They will not compromise with fraud. They will enter into no entangling alliances. The democratic senators have now no further duty to perform than to hold the ground they have taken until the deadlock is broken by the men who began it—the republican representatives-elect. We have reason to believe that the events of the next few days will show that yesterday's action was wisely taken; that concession will be met by concession.

THE ELECTION OF SENATORS.

Yesterday's action of the democratic state senators in taking the oath of office does not change the situation so far as the election of United States senators is concerned. The senate cannot be organized until it elects officers, and it cannot elect them unless a majority of its members vote for one set of candidates.

So long as the rump house of representatives is in existence the senate is likely to remain unorganized. No joint convention for the election of United States senators can be held until both houses are organized.

When the time finally comes to vote for United States senators, after an organization shall have been effected, each house must ballot separately. The law is clear and distinct in providing that when in separate session "each house must have a quorum"; that is, the senate nine members, and in the house of representatives twenty-eight members.

The lieutenant governor is not a senator and cuts no important figure in the election of United States senators. Suppose the eight republican state senators should attempt to disregard law and present in this matter—although we know some of them would not do so and I should go in a body to the rump house to ballot for United States senators, they would have no advantage over the eight democratic senators who would present at the same time to the regular house for the same purpose.

If one party can elect senators the other can do so. That is the whole position.

The lieutenant governor is no part of a quorum and his name is never called except to decide a tie. There would never be a tie when the eight senators of either party refrained from voting, and in the absence of any rules, none having been adopted, there is no power to compel any senator to vote.

The rump house still blocks the way to everything, but its days are numbered.

The prize fight in Butte yesterday was brutal and revolting enough to

please the most brutal admirer of that sport. One of the principals was killed and only the killing of the other was lacking to make the affair complete. Such a spectacle as that at Butte yesterday, one would think, would make the citizens of San Francisco and Seattle hesitate before raising big purses to hire bruisers to pound and possibly murder one another. The Portland West Shore, in commenting on this sort of business, sensibly says:

"It is difficult for a man who has his head set squarely upon his shoulders to conceive what benefit Seattle expects to derive from her efforts to secure the Sullivan-Jackson prize fight. That \$30,000 have been raised for that purpose is evidence that some men of means and presumably interested in the welfare of the city, have contributed to the fund. The effect of such an advertisement as Seattle will receive from such an affair, and, in fact, is already revealing, is the reverse of beneficial to its best interests. No city can expect to be benefited by proclaiming itself a paradise for prize fighters and law breakers, and conservative business men looking for a place to invest their spare capital will not give such a place the preference."

REPUBLICAN attempts to draw hope and consolation from the action of the democratic senators are amusing to those who know the conditions under which those senators took the oath. It will suddenly dawn on the state leaders that they were caught napping.

Gov. Toole holds office for three years; the rumps for two years—unless their seats are declared vacant. Cheerful prospect for recognition, isn't it?

DOES Lieut.-Gov. Rickards think the Old Warhorse a safe guide in his attempt to get light on his delicate duties? If so, let him read his political record.

Poor Old Warhorse! He doesn't know whether those of his own political household or his party opponents have contributed most to his undoing.

PUBLIC opinion will disintegrate the rumps as swiftly as a chinook does a snowbank.

Good bye, rumpers, good bye!

THE FIFTY-FIRST CONGRESS.

The Day in the Senate—The Clayton Killing in the House.

WASHINGTON, Dec. 16.—In the senate today among the petitions and memorials presented were several for the passage of a pension law as prepared by the pension committee of the G. A. R.; one for the admission of Wyoming as a state; one in favor of the Blair education bill; one from the Chicago board of trade for one cent postage, and several for the passage of the Sunday rest bill.

The house joint resolution for printing the agricultural report for 1889 passed with amendments fixing the number of copies at 40,000 and appropriating at \$200,000 for the work. Among the bills introduced and referred were the following: By Stanford, for the relief of manufacturers of wine for the establishment of a gun factory for finishing heavy ordnance on the Pacific coast. By Ingalls, for the allowance of a cumulative pension. By Manderson, for woman suffrage in all the states. Mitchell offered a resolution, which was agreed to, instructing the judiciary committee to inquire and report whether Chinese laborers who never have been in the United States, and who "will not go back," have not the country, may under existing legislation be permitted to enter the United States for the sole purpose of transit across the same, either with or without authority from the secretary of the treasury. Mitchell also offered a resolution, which was referred to the committee on foreign relations, calling on the president for all diplomatic correspondence between the United States and the government of China since the passage of the Chinese exclusion act in October, 1888, having reference to that act. The senate adopted the resolution of Ingalls for a holiday regulation. Thursday, Dec. 16, Mr. Steed has resigned his position as editor of the Pall Mall Gazette. He proposes to start a review.

Five men entered the express office at Brownwood last night, knocked the night clerk senseless and robbed the safe of \$1,000.

The sultan was yesterday invested with the grand cross of St. Michael and St. George, conferred by the queen of England. There was a grand ceremony.

A party of Poles were walking home from work on the Lackawanna railroad yesterday when a passenger train ran into them from around a curve. Three were killed outright and another fatally injured.

R. H. Huntington, city clerk of Council Bluff, Iowa, is short in his accounts and has resigned. The shortage at present amounts to \$700, which his bondsmen have paid. Gambling was the cause of his downfall.

Dr. Benedict, a saloon passenger on the La Bourgogne, from Havre to New York, went upon the promenade deck Dec. 12 during a severe gale, and was knocked down and probably fatally injured by a terrific sea which boarded the vessel.

A surgical operation was performed upon Lawrence Barrett yesterday at Boston, continuing in the removal of some sympathetic tissue from the brain. As far as is known, he will take himself to Germany, or some other European watering place for rest and recreation.

Recorder Smyth, of New York, yesterday handed down his decision in the case of the electric sugar swindlers Mrs. Friend, Mrs. Howard and Orin Holstead, refusing to accept the motion of District Attorney F. L. Dwyer that the records of the trial be discharged and that they be discharged on their own recognizances. He gave them permission to withdraw their plea of guilty.

Cut Flowers
For the holidays at Wells' conservatory, 52 South Davis.

THE DEATH RECORD.

Dr. Seth Pancoast, of Philadelphia, the well-known homeopathist, died yesterday. He was a descendant of one of the three Pancoast brothers who came to this country with William Penn.

New West Side Market.

Jan. 1, 1890, we will open a west side meat market at No. 403 Park avenue, where we will be better able to accommodate our numerous west side customers, and be pleased to see many new ones. With our east side and south side markets we will be well prepared to serve any part of the city. Respectfully,

MATTHEWS Bros.

Notice of Removal.

Drs. Paul & Haight have removed to their spacious parlors, rooms 1, 2, 3 and 4 Broadway building, corner Sixth avenue and Main street.

To make money go to the Journal Publishing Co.'s store. Goods are selling at ridiculous low prices.

The prize fight in Butte yesterday was brutal and revolting enough to

AN IMPORTANT DECISION.

Judge Hunt Holds That Ah Jim Cannot be Tried Upon Information.

An important decision was rendered by Judge Hunt yesterday in the case of the state vs. Ah Jim, the Chinese murderer. Messrs. Craven & Newman moved to squash the information against the defendant because: First—The clause of the constitution of the state which requires prosecutions by information is dormant without legislation to put it into effect. Second—Because at the time the homicide is alleged to have been committed, the laws of Montana expressly gave to a defendant charged with a felony the right to have his case investigated by a grand jury summoned according to law, composed of sixteen citizens of the county, but of which said right defendant has been deprived by the finding of the information which he has moved to set aside.

In the course of his exhaustive opinion Judge Hunt says: The authorities hold as a rule that mere changes in procedure alone do not affect the right of trial with the rule of *ex parte factio levior est*. Mr. Gooley implies that where substantial rights are interfered with, even though in practice such laws are not unconstitutional. So the question is, was this procedure in Montana in the nature of a substantial right?

It was, and that to suddenly cut it off and not give the defendant the right to say that he should be tried before he was, is affecting the substantial rights of a defendant.

Who can say that this defendant would be entitled to a grand jury to investigate his case? Hence, he must be maintained that his right to have the matter investigated is not a substantial one?

The constitution itself nowhere contains a syllable from which the court can infer that it meant to take away from defendants committed before admission the full benefit of all laws which then existed relating to criminal trials, while on the other hand it is plain that it does not favor retrospective operation, for it expressly forbids the passage of any ex post facto law. (See II, article 3, constitution.)

This is a close question, perhaps, and I hope it may be taken to the supreme court of the state, where, in the next three weeks, a procedure can be laid down in a review of the case. The result will depend on the nature of the information and the circumstances and doubtful forever hereafter in criminal matters. I will not order this defendant discharged, but will order him held pending the decision of the supreme court.

Judge Hunt cites many authorities in his opinion. The same ruling applies to the other cases on the county attorney's calendar. Nearly all the offences being committed before the change of system. The jury was discharged yesterday. County Attorney Nolan will appeal the case to the supreme court.

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